

Remarks

Claims 1-13 are presented for reconsideration, with claims 1 and 13 being the independent claims. Claim 1 is sought to be amended. No new matter has been entered by any amendments.

The Examiner is thanked for indicating claim 13 was allowed, and claim 11 contained allowable subject matter.

The amendments should be entered after final because the amendments are meant to merely clarify the claim features in line with the arguments Applicant has been making in response to several Office Actions. Thus, the amendments clearly should not raise any new issues or place a burden on the Examiner as the Examiner has already considered and responded to these arguments. Also, the amendments place the claims in condition for allowance, or at the minimum, place the claims in better condition for appeal.

Based on the above amendments and following remarks, Applicant respectfully requests that the Examiner reconsider all outstanding rejections and that they be withdrawn.

Rejections under 35 U.S.C. § 103(a)

Claims 1, 4-10, and 12 were rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over JP 06-215997 to Matsumoto ("Matsumoto") in view of U.S. Patent No. 5,593,606 to Owen et al. ("Owen"). Claim 2 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Matsumoto in view of Owen, and in further view of U.S. Patent No. 5,952,818 to Zhang et al. ("Zhang"). Claim 3 was rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over Matsumoto in view of Owen, and in further view of U.S. Patent No. 4,342,517 to Johnson et al. ("Johnson"). Applicant traverses these rejections.

Claim 1 has been amended to clarify features that distinguish over the applied references. For example, claim 1 now recites "wherein an axis of a light beam path passes through, in optical order, a source of the light beam, the variable wave plate, the

reticle, and the first optical device, and wherein the variable wave plate is positioned along the axis next to the reticle and before the first optical device.” For example, as seen in Figures 3-9 and related text in the instant specification, “an axis of a light beam path” can be defined as a straight line starting at a light source (e.g., 302, 402, 502, 602, 702, 802, or 902) and passing through a respective first optical system (e.g., 320, 420, LG1, LG4, or LG7), as recited in claim 1. This same axis passes through the reticle and variable wave plate between the light source and the first optical system.

The Examiner does not specifically discuss what he alleges in Matsumoto teaches or suggests the recited “axis” feature. In contrast, on page 6, the Examiner argues Matsumoto teaches a different arrangement of the optical features, asserting the Applicant had not positively recited what Applicant’s had argued. Although Applicant believes the previously pending claim 1 positively recited what Applicant argued in the previous amendment(s) and reply(ies), Applicant has amended claim 1, as shown above, to clarify this feature. Thus, Applicant cannot find any teaching or suggestion in Matsumoto that meets the recited “axis” feature. In contrast to what is recited in claim 1, Matsumoto’s optical system includes a first axis between a light source 20 and a beam splitter 15 and a second axis between a reflection device 12 and a substrate 19, which second axis also passes through a reticle 14 and a quarter wave plate 16, but the second axis is perpendicular to the first axis.

Owen is not used by the Examiner to cure this deficiency in Matsumoto, nor does it cure this deficiency. Also, Applicant asserts any use by the Examiner to apply piecemeal parts of Owen’s optical system to Matsumoto’s optical system to cure this deficiency would destroy the teaching in Matsumoto by making the optical system unsatisfactory for its intended purpose and/or change the optical system’s principle of operation. See M.P.E.P § 2143.01(V) and (VI). The Examiner did not address this argument in the final Office Action, which was raised in the previously filed amendment and reply.

Also, it is impermissible hindsight to take a single line in a reference out of context, as the Examiner has done with Owen, and rely upon it for obviousness, as the Examiner has done in this case in the rejection of claim 1 over Matsumoto in view of Owen. *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.*, 796 F.2d 443, 230

U.S.P.Q. 416 (Fed. Cir. 1986); *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988) ("One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention."); *In re Gorman*, 933 F.2d 982, 18 U.S.P.Q.2d 1885 (Fed. Cir. 1991) (stating it was impermissible to use applicant's structure as a template to select elements from a reference or references to fill in the gaps).

Therefore, for at least these reasons, Matsumoto and Owen cannot be used by the Examiner to form a prima facie case of obviousness.

Further, none of the other applied references, Zhang and Johnson, are used to teach or suggest the distinguishing features recited in claim 1, nor do they teach or suggest the distinguishing features. Therefore, these other applied references fail to cure the deficiencies of Matsumoto and Owen, and cannot be used by the Examiner to form a prima facie case of obviousness.

Accordingly, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claim 1, and find it allowable over the applied references. Also, at least based on their dependency to claim 1, claims 2-10 and 12 should be found allowable over the applied references.

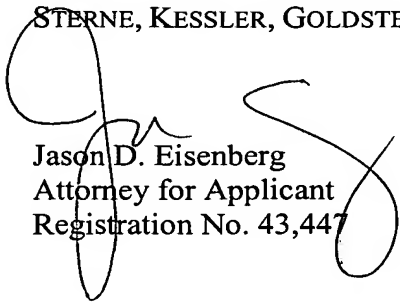
Conclusion

All of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicant therefore respectfully requests that the Examiner reconsider all presently outstanding rejections and that they be withdrawn. Applicant believes that a full and complete reply has been made to the outstanding Office Action and, as such, the present application is in condition for allowance. If the Examiner believes, for any reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment and Reply is respectfully requested.

Respectfully submitted,

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